

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
BOISE CASCADE CORPORATION, )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 78-14

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty for smoke emissions allegedly in violation of respondent's Section 9.03(b) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman and Chris Smith, Member, convened at Tacoma, Washington on March 1, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing.

Appellant appeared by and through its attorney, Andrea E. Thrasher. Respondent appeared by and through its attorney, Keith D. McGoffin. Olympia court reporter Christie Check recorded the proceedings.

1 Witnesses were sworn and testified. Exhibits were examined.  
2 From testimony heard and exhibits examined, the Pollution Control  
3 Hearings Board makes these

#### 4 FINDINGS OF FACT

##### 5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this  
7 Hearings Board a certified copy of its Regulation I containing  
8 respondent's regulations and amendments thereto of which official  
9 notice is taken.

##### 10 II

11 Appellant owns and operates a paper mill, known as the West  
12 Tacoma mill, at Steilacoom, Washington. On December 8, 1977 an  
13 unanticipated interruption of electrical power resulted in the stoppage  
14 of paper machines Nos. 2 and 3. This occurred at 1:05 p.m.

15 Because the paper machines were stopped by the electrical failure,  
16 steam which also powers the machines was no longer needed. Consequently,  
17 the appellant extinguished the gas and oil-fired overburners within the  
18 hog fuel boilers which supply the steam. By this action the boiler  
19 temperature was reduced and less steam was produced. At the same time,  
20 however, the lower boiler temperature caused the hog fuel boiler to  
21 emit smoke into the atmosphere. This smoke was observed by respondent's  
22 inspector who was on routine patrol in the area.

##### 23 III

24 Respondent's inspector first viewed the smoke emissions at 1:15 p.m.,  
25 and thereafter made an observation to determine opacity. That opacity  
26 ranged from 30 to 80 percent for 16 minutes within one hour. After

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1 completing his observation, respondent's inspector visited the office of  
2 one of appellant's employees, Charles Rohrs, whose duty it was to  
3 monitor smoke emissions and report to respondent any excessive emissions  
4 arising from an upset at the mill.

#### 5 IV

6 Arriving at Mr. Rohrs' office at 1:45 p.m., respondent's inspector  
7 informed Mr. Rohrs of the excessive emission, which was the first he,  
8 Mr. Rohrs, knew of it. There was no attempt by appellant to notify  
9 respondent of the emission prior to the arrival of respondent's  
10 inspector. Appellant was aware of respondent's regulations prohibiting  
11 certain smoke emissions (Section 9.03(b)) and providing for an exception  
12 if respondent is immediately notified of emissions caused by an infor-  
13 seeable failure or breakdown (Section 9.16). A Notice and Order of Civil  
14 Penalty No. 3650 in the amount of \$250 was subsequently issued to  
15 appellant. From this, appellant appeals.

#### 16 V

17 Any Conclusion of Law which should be deemed a Finding of Fact  
18 is hereby adopted as such.

19 From these Findings, the Pollution Control Hearings Board comes to  
20 these

#### 21 CONCLUSIONS OF LAW

#### 22 I

23 Respondent has affirmatively shown that appellant violated  
24 Section 9.03(b) of respondent's Regulation I by emitting an air  
25 contaminant, smoke, for more than three minutes in any one hour, which  
; contaminant is of an opacity obscuring an observer's view to a degree

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equal to or greater than does smoke designated as No. 1 on the Ringelman Chart. Appellant does not contest this, nor the amount of penalty. The sole purpose for which this appeal has been brought, rather, was to test the applicability of the exculpatory provisions of Section 9.16 of respondent's Regulation I.

Emissions exceeding any of the limits established by this Regulation as a direct result of start-ups, periodic shutdown, or unavoidable and unforeseeable failure or breakdown, or unavoidable and unforeseeable upset or breakdown of process equipment or control apparatus, shall not be deemed in violation provided the following requirements are met:

(1) The owner or operator of such process or equipment shall immediately notify the Agency of such occurrence, together with the pertinent facts relating thereto regarding nature of problem as well as time, date, duration and anticipated influence on emissions from the source.

(2) The owner or operator shall, upon the request of the Control Officer, submit a full report including the known causes and the preventive measures to be taken to minimize or eliminate a re-occurrence.

## II

Appellant urges that the "immediate" notification required by Section 9.16 should be interpreted to allow delay while conditions causing an upset are reckoned with. While that position may be tenable in other factual situations, it is without merit here. While some or most of appellant's employees should be engaged in correcting an upset condition and assuring safety, it takes but one employee to notify the respondent by telephone. Although Mr. Rohrs, appellant's employee charged with monitoring and reporting excess emissions, did not know of the smoke until informed by respondent, the burden is upon appellant to devise means of discovering emissions from their own premises and then immediately reporting them to respondent when seeking to take advantage

1 of Section 9.16. Here, some 40 minutes elapsed from the time of upset,  
2 1:05 p.m., until the time of the inspector's arrival at 1:45 p.m. There  
3 was neither actual notification nor a bonafide, good faith attempt by  
4 appellant to notify respondent until the inspector walked onto the scene  
5 to notify appellant. Under these circumstances, the provisions of  
6 Section 9.16 are not available to exculpate the appellant. Edward R.  
7 Ester v. Puget Sound Air Pollution Control Agency, PCHB No. 77-59 (1977);  
8 M.S. HALO v. Puget Sound Air Pollution Control Agency, PCHB No. 77-99  
9 (1977); Bethlehem Steel Corp. v. Puget Sound Air Pollution Control Agency,  
10 PCHB No. 775 (1975); Chevron Shipping Co. v. Puget Sound Air Pollution  
11 Control Agency, PCHB No. 550 (1974) and The Chemithon Corp. v. Puget  
12 Sound Air Pollution Control Agency, PCHB No. 280 (1973).

13 III

14 Any Finding of Fact which should be deemed a Conclusion of Law  
15 is hereby adopted as such.

16 From these Conclusions, the Pollution Control Hearings Board enters  
17 this


18 ORDER

19 The \$250 civil penalty appealed from, and imposed by Notice and  
20 Order of Civil Penalty No. 3650, is hereby affirmed.

21 DONE at Lacey, Washington, this 3d day of March, 1978.

22 POLLUTION CONTROL HEARINGS BOARD

23   
24 DAVE L. MOONEY, Chairman

25   
26 CHRIS SMITH, Member

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